IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 454 OF 2006.

1. Goa State Cooperative Bank Ltd.
having its registered office at
Junta House, 3rd Floor,
Panaji, Goa, presently having
office at "Sahakar Sankul", Patto Plaza,
Panaji, Goa, through its
Managing Director.
2. Branch Manager,
Goa State Cooperative Bank Ltd.,
Ponda Branch.
3. The Recovery and Sales Officer,
Goa State Cooperative Bank Ltd.,
Regional Office, Central Zone,
Upper Bazaar, Ponda, Goa. .... Petitioner
(Orig.Defendants)

Versus

Shri Rajan Vinayak Lotlikar,
Proprietor of M/s Raj Jewellers,
Shop No. C-1,
Dr. Lourenco Almeida Complex
Ponda, Goa. .... Respondent.
(Orig. Plaintiff)

Shri G. Nagvenkar, Advocate for the Petitioner.

Shri S. Y. Thali, Advocate for the Respondlent.

CORAM: J. N. PATEL, J.

DATE: 23rd NOVEMBER, 2006.

ORAL JUDGMENT:

Rule. Rule returnable forthwith.

2. Heard the learned counsel for the parties.

3. The petitioner is the original defendant who has impugned the Order dated 7th August, 2006 passed by the trial Court in Civil Misc. Application No.90/2006/A filed in Regular Civil Suit No.40/2006/A filed by the respondent/plaintiff for amendment so as to incorporate the relief of compensation on the basis of events occurring during the period from 25.4.06 to 24.6.06.

4. The learned counsel appearing for the petitioner/original defendant submitted that the trial Court ought not to have allowed such application for amendment so as to incorporate the relief in the form of compensation filed in the application for proposed amendment as the original suit of the plaintiff is for declaration, mandatory and permanent injunction so as to prevent the petitioner/defendant from recovering the loan advanced to the respondent/plaintiff. It is submitted that the Civil Court has no jurisdiction in the matter and the issue was agitated till the High Court and the High Court by its Order dated 5th July, 2006 in Appeal from Order No.46/06 and Writ Petition No.276/06 disposed of the matter by Judgment and Order directing the trial Court to decide the issue of jurisdiction afresh without being influenced by the observations made in the impugned Order dated 10.05.2006. Insofar as the Order which is now challenged in this petition wherein the trial Court has allowed the application for amendment is concerned, this Court does not find that in

any way it will cause prejudice to the petitioner/original defendant and as the Trial Court has used its discretion in permitting such amendment, does not call for any interference.

5. This Court takes serious note of certain observations made in the impugned Order relating to the issue of jurisdiction. The trial Court while disposing of the application for seeking amendment has observed:-

" As regards jurisdiction aspect is concerned, this Court has jurisdiction to entertain and dispose of the present suit and the defendants have failed to show prima facie to the contrary. "

6. The trial Court has overstepped its jurisdiction in making such observations and has rather concluded the issue which it is expected to decide independent of the claim sought to be incorporated by way of amendment and as directed by this Court in its earlier Order, the trial Court ought to have refrained from even making a prima facie observation as regards jurisdiction which now has to be decided on merits.

7. Therefore this Court quash and sets aside the aforesaid observations made by the trial Court in the impugned Order and remind the trial Court of its duty to independently decide the issue of jurisdiction on the basis of the

evidence and the law on the point rather than making such stray observations to the prejudice of the defendant which was raised as a preliminary issue and on the basis of which the defendant has sought rejection of plaint.

8. The Court refrains from making any observation in the matter that may prejudice the merits of the issue before the trial Court. With these observations the petition is partly allowed. Rule is made absolute accordingly with costs which is quantified at Rs.10,000/- to be paid by the respondent/original plaintiff within a period of two weeks. On failure on the part of the respondent/original plaintiff to pay the costs, the suit will stand dismissed.

J. N. PATEL, J.

sl.